

EXHIBIT 3

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4 Civil Action No. 10-141 (CM) (KF)

5 MARVEL WORLDWIDE, INC.,)
6 MARVEL CHARACTERS, INC.,)
7 and MVL RIGHTS, LLC.,)

8 Plaintiffs,)

9 vs.)

10 LISA R. KIRBY, BARBARA J.)
11 KIRBY, NEAL L. KIRBY and)
12 SUSAN N. KIRBY,)

13 Defendants.)
14)
15)

16 VOLUME I

17 VIDEOTAPED DEPOSITION OF

18 ROY THOMAS

19 October 26, 2010

20 10:06 a.m.

21 Holiday Inn Express
22 Orangeburg, South Carolina

23 ANNIE O'HARA, CCR-B-2340, SC Notary
24
25

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 10-141-CMKF
4

5 MARVEL WORLDWIDE, INC.,
6 MARVEL CHARACTERS, INC., and
7 MVL RIGHTS, LLC,
8 Plaintiffs,
9 VS.

10 LISA R. KIRBY, BARBARA J. KIRBY,
11 NEAL L. KIRBY and SUSAN N. KIRBY,
12 Defendants.
13
14

15 Volume II
16 Videotape Deposition of:
17 Roy Thomas
18 Wednesday, October 27, 2010
19 Orangeburg, South Carolina
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1 Thomas

2 editorial-type responsibilities that you -- you were
3 doing during this time you were paid a salary?

4 A. Yes.

5 Q. And then you were paid on top of that a
6 per-page rate for freelance writing work that you
7 did?

8 A. Yes. Yes. That actually began at the
9 very beginning, because the day I met Stan on a
10 Friday he gave me a story to dialogue, as we call
11 it, over the weekend. And that was counted as
12 freelance. So I received money -- or earned money a
13 week or so later as a freelance writer before I
14 freelanced, before I actually went on staff the next
15 morning.

16 Q. Okay.

17 A. So they sort of -- they overlapped from
18 the very beginning.

19 Q. Who did you report to when you were a
20 staff writer?

21 A. The only real person I reported to
22 officially would have been Stan Lee, but as a matter
23 of practical fact, Stan gave out many of his
24 directives or communications through the production
25 manager, Sol Brodski. So while he wasn't exactly

1 Thomas

2 technically my superior, he was a person that gave
3 me a lot of Stan's, you know, marching orders or
4 whatever and was very, very -- informal would be the
5 polite way to describe operations in the 1960s.

6 Q. Did there come a time that your title
7 changed from staff writer to something else?

8 A. Well, I just stopped being a staff writer
9 at that point, a month or two in. And we never
10 talked much about titles, but I guess I was like the
11 assistant editor or editorial assistant. I was
12 never told that. That's what I assumed I was. I
13 never had an official title until I was called
14 associate editor.

15 Q. When was that?

16 A. Around the end of 1966 or beginning of '67
17 Stan told me and the new assistant editor, who was a
18 friend of mine. He said: Well, we have got to have
19 some titles around here, he told me one day. He
20 said: I'm the editor, so I guess that makes you the
21 associate editor; and Gary, my friend, was the
22 assistant editor. From that time on, about a year
23 and a half or so after I worked there, I was the
24 associate editor until what? Middle or late 1972,
25 when I became editor-in-chief.

1 Thomas

2 11:13 a.m.

3 BY MS. KLEINICK:

4 Q. Mr. Thomas, can you describe for us when
5 you arrived in Marvel in the 1960s what the first
6 step was in the process of creating a comic book
7 issue?

8 A. The first step was for the designated
9 writer to come up with a plot idea.

10 Q. How did the designated writer become
11 designated?

12 A. That was Stan Lee's decision. Of course,
13 it was often him designating himself, but then it
14 became me or someone else.

15 (Discussion off the record.)

16 BY MS. KLEINICK:

17 Q. What happens after the designated writer
18 comes up with a plot idea?

19 A. The writer would either write out the plot
20 or synopsis. We used those terms interchangeably or
21 he might -- in some cases, but usually it was
22 written -- might verbally -- one way or the other we
23 would give it to the -- the pencil artist. We would
24 often call the person the artist, but it was really
25 the pencil artist, who might or might not be the

1 Thomas

2 inker.

3 Q. How did the pencil artist become
4 designated to do the particular issue?

5 MR. TOBEROFF: Leading; lacks foundation.
6 BY MS. KLEINICK:

7 Q. You can answer.

8 A. He -- that was Stan Lee's decision.

9 Q. When in the process was the writer and the
10 artist for a particular issue selected? When in the
11 process?

12 A. Well, I guess I would say more at the
13 beginning. I mean, right away -- when in the
14 process -- I mean, the writer -- either one of them
15 might have been put on first, because the artist
16 might be continuing, while it might be a new writer
17 or visa versa. I'm not sure if I understood the
18 question exactly.

19 Q. What would happen after the writer
20 provides either a plot or synopsis to the artist?

21 A. The artist would go and draw or pencil the
22 story.

23 Q. And what would the artist do after the
24 artist drew or penciled the story?

25 A. It would then be mailed or brought

1 Thomas

2 physically into the -- the office so Stan Lee could
3 review it. Of course, he was the writer. He would
4 also be writing them.

5 Q. And after Stan Lee reviewed the artwork,
6 what would happen next?

7 A. Well, if there were no corrections, it
8 would then be written by the writer, which would
9 either be Stan Lee or perhaps someone else.
10 Usually, Stan at that stage, when I first arrived.

11 Q. And when you say "written," what do you
12 mean?

13 A. Well, yes, what I really meant there is
14 the term that -- what we later came to use the verb
15 "dialogue for," which means to write the dialogue,
16 which includes, actually, the dialogue and the
17 so-called captions. And while doing that to
18 indicate those -- where those captions and balloons
19 come on the page, generally writing it on the
20 original artwork -- not the copy, but indicating the
21 shape of the balloons and the captions and writing a
22 separate script.

23 Q. And after the writer wrote the dialogue
24 and captions, what would happen next?

25 A. Well, if it was Stan or his brother Larry

1 Thomas

2 Lieber at that stage, it would be sent to the inking
3 the inker, we call it, the artist who applied the
4 ink, who usually was not the same artist who
5 penciled it; although, it was -- it could be but it
6 usually was not. If it was a new writer like me,
7 Stan would go over the -- the scripts first for the
8 first few months before it would be sent out.

9 Q. And where would it go after Stan would
10 review the scripts?

11 A. It then goes to a letterer. It would be
12 sent out -- I'm sorry. I said the inking art. I'm
13 sorry, it has to go to the letterer first. I'm
14 sorry. My mistake.

15 Q. What does the letterer do?

16 A. The letterer was the person who would
17 letter the actual dialogue and captions as well as
18 their shapes onto the page in ink.

19 Q. What is the difference between a letterer
20 and the inker?

21 A. The inker was the person who would apply
22 the ink to the drawing portion of the page, go over
23 to and amend and add to what the penciller had --
24 had drawn.

25 Q. So it goes from the letterer to the inker?

1 Thomas

2 A. Yes. Sometimes, it would come back
3 through the office to be rerouted, but often it was
4 just sent -- Stan, generally, did not review things
5 between the stages of lettering and inking, so quite
6 often the letterer was asked to just mail it
7 directly on to the -- to the inker. Or, you know,
8 the inker might even some days come by and pick it
9 up. There were many, many different little ways it
10 could work.

11 Q. What happens after the inker goes over the
12 pencils?

13 A. After the book is inked, the inker would
14 either mail or bring it into the office, either
15 turning it directly to Stan or to the production
16 manager, depending on whether Stan wanted to see him
17 or not.

18 Q. What would happen to it when it got to
19 either Stan or the production manager?

20 A. Stan would go over the story and proofread
21 it, asking for any changes he wanted on either the
22 copy or even at that stage, even still on the art if
23 he saw something that didn't quite work out.

24 Q. At what point does the issue get colored?

25 A. Well, at the time that the -- generally --

1 Thomas

2 pretty much as soon as the inking would come into
3 the office or very soon thereafter, it would be
4 Photostatted and reduced to a smaller size, about
5 the size of a comic page or so.

6 And those Photostats would be given to
7 what we call the colorist who is the person who
8 actually applied water colors to that to indicate
9 what the colors should be and also would write in
10 notations to clarify so that the colors would be
11 matched in the final book by the people who actually
12 did the physical coloring that got reproduced.
13 These were actually called color guides, what the
14 colorist did.

15 Q. Were the letterer, inker, and the colorist
16 all paid?

17 A. Yes.

18 Q. How were they paid, do you know?

19 A. By the page, according to whatever rate,
20 you know, varying rates they -- they had.

21 Q. At what point in the process does the
22 cover page -- did the cover page for the issue get
23 put together?

24 A. Well, it could be at any time. Usually,
25 it was after the story had been at least penciled.

1 Thomas

2 from time to time new villains or new supporting
3 characters.

4 Q. Did artists ever come up with ideas for
5 new characters?

6 A. Yes.

7 Q. Was it your understanding that part of the
8 writer's assignment was to introduce new characters
9 into a comic book series?

10 A. Yes.

11 Q. Was it your understanding that part of the
12 artist's assignment was to introduce new characters
13 into a comic book series?

14 A. Yes, anything that would be -- would
15 further the plot.

16 Q. How -- how did the artists know what to
17 draw?

18 MR. TOBEROFF: Leading; vague.

19 THE WITNESS: The artists were given a
20 story line, which might be anything from a few
21 sentences to in quite a few cases two or three
22 pages or so of a -- a sort of a --a general plot
23 line. It wasn't the exact dialogue, you know,
24 in movie script form. It was more a short story
25 synopsis of the scene. And that would tell the

1 Thomas

2 artist what the story was. Then it was his job
3 to turn that into pictures.

4 BY MS. KLEINICK:

5 Q. When you arrived at Marvel in 1965, did
6 you ever see Stan interacting with other writers or
7 artists?

8 A. Yes.

9 Q. Did you ever see Stan give a plot or
10 describe a plot to an artist?

11 A. Yes.

12 Q. To your knowledge did artists start
13 working on pages before discussing the plot or
14 synopsis with Stan or the writer?

15 A. No.

16 Q. Who decided which writer and artist would
17 work on a particular comic book or issue?

18 A. Stan.

19 Q. Were the assignments to writers given
20 orally or in writing?

21 A. Generally, orally.

22 Q. Are you aware of how assignments were
23 given to artists?

24 A. Well, orally. Sometimes Stan would be
25 talking to the person directly. Just as often or

1 Thomas

2 more often Sol Brodski as the production manager
3 would later report -- would call that person up and
4 tell them. But, of course, they were always
5 understood to be speaking for Stan, and they were.

6 Q. And just so we're clear, I just want you
7 understand, when I'm saying "assignment," I mean the
8 assignment to do a particular issue.

9 A. Uh-huh.

10 Q. Is that how you understood my question?

11 A. Yes.

12 Q. Are you aware of any instance where a
13 writer began to work on a new series or title or
14 comic book without first being assigned to it by
15 Stan?

16 A. People might come up with an idea for a
17 new series at some stage. Not -- not in the -- this
18 -- this wouldn't have happened before at least
19 about, you know, the early '70s or so. Once or
20 twice -- generally speaking, the ideas were
21 generated, you know, by someone in the office, by
22 Stan or sometimes later by me; but we were open to
23 somebody else coming in, but it wasn't anything we
24 were going around looking for or asking for.

25 Q. In the 1960s -- from 1965 to 1970, are you

1
2 aware of any instance where a writer came in and
3 actually started working on a new series before Stan
4 said: Go ahead and write the series?

5 A. No.

6 Q. Are you aware of any instances where an
7 artist began work on a comic book issue before
8 getting the assignment to do the issue from Stan?

9 A. No.

10 Q. Did writers or artists have any authority
11 to assign themselves to do an issue without prior
12 approval from Stan or Sol?

13 A. No. No.

14 Q. Are you aware of any instances where an
15 artist submitted artwork for an issue that he hadn't
16 been assigned to, like on spec?

17 A. Only new artists who were turning in
18 samples, not an established artist, not one that was
19 already -- was already doing work for Marvel.

20 Q. To your knowledge during this time period,
21 1965 to 1972, did Marvel ever buy any work created
22 on spec by freelance artists?

23 A. No. No.

24 Q. Were writers or artists ever during this
25 time period taken off a comic book issue for an

1 Thomas

2 ongoing series?

3 A. Yes.

4 Q. Whose decision was that?

5 A. Stan.

6 Q. And who had the final say on which comic
7 book stories each artist would be assigned to?

8 A. Stan Lee. He could have been technically
9 overruled by publisher Martin Goodman, if Martin
10 Goodman found there was some artist or someone he
11 really didn't like or he did like or something. But
12 as a practical matter, Goodman did not concern
13 himself with anything like that, except at sometimes
14 there were certain artists whose covers he didn't
15 think were clear enough.

16 He didn't like if Stan assigned that
17 person to do a cover. Occasionally, they had a
18 little problem about that. And, of course,
19 Goodman's word was final. But as a matter of
20 practical fact, 90-plus percent of the time it was
21 Stan's decision.

22 Q. Was there a set production schedule for
23 the Marvel comic titles back in the 1960s to early
24 '70s?

25 A. Yes.

1 Thomas

2 Q. When the writers were given an assignment,
3 were they also given a deadline to submit the --
4 let's start with the artist. When the artists were
5 given an assignment, were they given a deadline by
6 which they had to submit the finished pencils?

7 A. Yes. Either the exact date or as fast as
8 you could do it. But, yes. They were doing a
9 deadline.

10 Q. And then when the artwork went to the
11 writers, were the writers also given deadlines by
12 which they had to submit the scripts?

13 A. Yes.

14 Q. The dialogue?

15 A. Yes.

16 Q. Who set those deadlines?

17 A. They were worked out by the production
18 manager.

19 Q. That was Sol Brodski?

20 A. Yes. Through '70 or so when he quit.
21 After that by John Berpoorten.

22 Q. And who ultimately decided which books
23 were published and which books weren't published?

24 A. Well, during that period and through about
25 sometime in about '72, it was generally Martin

1 Thomas

2 Goodman. For a short period of time in the early
3 '70s it was his son Chip Goodman who had -- who was
4 -- had become publisher.

5 Q. Was the assignment process the same for
6 freelancers as it was for staff writers and artists?

7 MR. TOBEROFF: Vague.

8 THE WITNESS: I was going ask, just to --
9 if you could clarify that, just I make sure --
10 I'm sure I understand it.

11 BY MS. KLEINICK:

12 Q. Did staff artists get their assignments
13 the same way, from Stan or from Sol Brodski?

14 A. Oh, yes.

15 MR. TOBEROFF: Compound.

16 BY MS. KLEINICK:

17 Q. How did staff artists get their
18 assignments?

19 A. They were told either directly by Stan or
20 quite often by Sol Brodski in his capacity to do
21 them. Of course, if Sol assigned an artist, it was
22 because Stan wanted that artist assigned to it.
23 They would confer on it and say: Is this artist
24 available. Things of this sort.

25 Sol was the practical one who had to tell

1 Thomas

2 Stan that, you know, this artist can't do it or can
3 do it, or it will cause problems if this artist was
4 taken off something else to do this and that. They
5 worked very closely on that.

6 Q. So after the artist submitted pencil
7 drawings, you testified that Stan would review the
8 artist's work; correct?

9 A. Yes.

10 Q. Was that the case for all of the Marvel
11 artists, that Stan reviewed their work?

12 A. Yes. He paid a little less attention,
13 perhaps, to some of the, you know, lesser books --
14 he probably went -- you know, like the westerns and
15 so forth that were kind of dying out. But he
16 reviewed everything.

17 Q. Were artists ever asked to make changes to
18 the materials they submitted for publication?

19 A. Yes.

20 Q. Who did those requests come from?

21 A. They either came directly from Stan or,
22 again, were delivered by Sol Brodski on Stan's
23 behalf, or even I might eventually be asked to tell
24 someone. But, again, it was always on behalf of
25 Stan. In the early days I wouldn't have made any

1 Thomas

2 independent judgments of that sort.

3 Q. Did Stan or any of the other Marvel
4 editors, including yourself, ever revise the work
5 that had been submitted by an artist?

6 A. Yes.

7 Q. What kind of direction or feedback did
8 artists typically get from either Stan or another
9 editor in the 1960s to early '70s?

10 MR. TOBEROFF: Lacks foundation; leading.

11 THE WITNESS: He would give them an
12 impression of whether he generally liked the
13 work or not and things he particularly liked and
14 perhaps things he didn't like or that they
15 should watch it and perhaps do it a little
16 differently in the future. That's something he
17 might let go this time, but he would like them
18 to get more excitement or do this or do that.

19 BY MS. KLEINICK:

20 Q. Did you hear Stan communicating this to
21 artists?

22 A. Yes.

23 Q. Were changes ever made by Stan or any of
24 the other Marvel editors or production people
25 without first consulting the artist?

1 Thomas

2 A. Yes.

3 Q. And you testified that when the writer
4 brought in the completed assignment, the dialogue,
5 that if it was a writer other than Stan, that Stan
6 would review that work product; is that correct?

7 A. Yes.

8 Q. Were writers ever asked to make changes to
9 their work?

10 A. Yes. Sometimes the writer was asked to
11 make the changes, or sometimes Stan would just make
12 it himself, make the change himself.

13 Q. And when Stan made the changes himself,
14 did he consult with the writer?

15 A. No. He might tell us what he was going to
16 do or what he had already done, but it was a case of
17 telling us, not consulting and asking for our extra
18 input or anything like that. He would let us know
19 and he would try to tell us why he did it.

20 Q. When you were either assistant editor or
21 associate editor or editor-in-chief -- in any of
22 those editorial capacities -- did you have authority
23 to make changes to materials that were submitted for
24 publication if you believed that changes were
25 appropriate?

1 Thomas

2 A. Yes. In the, you know, very earliest days
3 I wouldn't have done that; but gradually Stan let me
4 know as time went on that, you know, that I should
5 -- that I could take, you know, some of this, you
6 know, burden off. And so it was a practical fact if
7 I was sure that it was something that Stan would
8 want or at least I thought that Stan would want --
9 but I would tend for much of that time, most of that
10 time, until I was at least editor-in-chief to try to
11 check it with him if I could.

12 Q. Did -- did Stan ever -- if Stan decided.
13 Was it your understanding that Marvel had
14 the ability to use characters that were introduced
15 into its story lines by a writer and artist into a
16 different comic book story line being drawn and
17 written by a different artist and writer?

18 MR. TOBEROFF: Objection; compound;
19 leading; vague.

20 BY MS. KLEINICK:

21 Q. You can answer.

22 MR. TOBEROFF: Assumes facts.

23 THE WITNESS: If by the ability you mean
24 the right to do it, and the -- yes.

25 BY MS. KLEINICK:

1 Thomas

2 Q. Was that done -- was that done in the '60s
3 after you got there, where characters that had been
4 introduced into one comic book line title were used
5 in other comic book lines or titles?

6 MR. TOBEROFF: Same objections.

7 THE WITNESS: Yes.

8 BY MS. KLEINICK:

9 Q. You testified that the writer was
10 responsible for writing the dialogue in the comic
11 books; is that right?

12 A. Yes.

13 Q. Did artists ever suggest or submit
14 dialogue with their drawings?

15 A. Yes, the artists wrote what we call margin
16 notes in pencil that was supposed to sort of tell
17 Stan what they were thinking when they did the
18 story, since they were working on his story. And in
19 some of those notes, besides saying: This blows up
20 or something, sometimes the artist wrote either what
21 we call direct or indirect, you know, quotations.
22 Either suggested exact dialogue or approximate
23 dialogue.

24 Q. Who had the final say on what the dialogue
25 would be for the story?

1 Thomas

2 A. Well, the writer, subject to Stan.

3 Q. If a character that one -- that a writer
4 and artist first introduced into a Marvel story line
5 was going to be used in a different story line that
6 was being written by a different writer and artist,
7 did anyone have to go back and consult with the
8 original writer and artist to use that character?

9 MR. TOBEROFF: Incomplete hypothetical.

10 THE WITNESS: The person who made all
11 those decisions was Stan. You didn't have to
12 consult with the other person. As a matter of,
13 you know, courtesy or information, you might do
14 it; but it was not required.

15 BY MS. KLEINICK:

16 Q. Who decided which artist would do a cover
17 for a particular issue?

18 A. Stan.

19 Q. Were the covers reviewed by anyone before
20 they were published?

21 A. Well, they were reviewed by Stan, because
22 after they were drawn he wrote the cover copy and
23 then looked it over again after -- after the cover
24 was inked, either by the same artist or a different
25 one.

1 Thomas

2 Then it was -- then they were reviewed --
3 they were all reviewed eventually by Martin Goodman
4 as publisher, and very briefly as I said by Chip
5 Goodman, and, of course, from '72 to '74 by Stan
6 himself as publisher.

7 Q. From the time you arrived at Marvel from
8 '65 to '72 were changes ever made to the covers that
9 had been submitted by artists?

10 A. Yes.

11 Q. Who would make those changes?

12 A. That depended upon circumstances. If the
13 original artist was there or if there was time to
14 either have him come in or to mail it or send it to
15 him, he might be asked to make the changes.
16 Sometimes, either if it was a minor change or if the
17 deadline needs were great or for any other reason,
18 Stan -- especially in consulting with the production
19 manager who had the responsibility with the schedule
20 -- would decide, you know, that it should be done by
21 a staff artist or perhaps a visiting freelance
22 artist who just came in. It really depended on what
23 the change was and what the time was.

24 Q. And if an artist's work -- if an artist's
25 work required that changes be made, would the artist

1 Thomas

2 have been paid for the original work that they
3 submitted?

4 MR. TOBEROFF: Incomplete hypothetical.

5 THE WITNESS: Yes, the artist would have
6 been paid.

7 BY MS. KLEINICK:

8 Q. Between '65 and at least '72 you were paid
9 both a salary and for your editorial work and a page
10 rate for your the freelance writing that you did?

11 A. Right.

12 Q. How often were you paid?

13 A. That's something I am a little vague
14 about. I know that the salary checks were more
15 frequent than the freelance checks, but I'm -- they
16 both came on Fridays but not always at the same
17 time. I'm just not certain if we were paid -- I --
18 I feel we were probably paid salary checks every
19 week, and maybe the freelance was every other week;
20 but I'm not 100 percent sure of that. It all kind
21 of fades together after a while.

22 Q. Who decided what the page rates for
23 freelance writers and artists would be?

24 A. Well, Stan had the individual
25 responsibility; but, of course, it was subject to

1 Thomas

2 Q. Do you recall whether or not there was any
3 legend or stamp on the checks that were issued by
4 Marvel to you for your freelance work at the time
5 you first started working for Marvel in the 1960s?

6 MR. TOBEROFF: Leading; assumes facts.

7 THE WITNESS: Yes, there were stamped
8 legends or paragraphs on the back of the checks.
9 I cannot remember offhand if they were on both
10 the freelance and the staff checks. I know they
11 were on the freelance checks, but I don't recall
12 whether they were on the others. Because I
13 never -- you know, after a while you just stop
14 paying attention to those. You just sign the
15 check and that was it.

16 BY MS. KLEINICK:

17 Q. Do you recall whether the first freelance
18 checks you received from Marvel had a legend or
19 stamp on the check?

20 A. I know that all the ones I remember did.
21 And I remember back pretty early, but, you know, I
22 couldn't swear the very first one did; but it, you
23 know -- you know, it seemed like it was an ongoing
24 policy.

25 Q. Do you recall what the legend said?

1 Thomas

2 A. Only in a general sense. I, of course,
3 read it; but, basically, it was saying that the
4 company had -- owned all the -- the copyrights and
5 all of the rights to the material for which I was
6 being -- material or work for which I was being
7 paid.

8 Q. And was that the same type of language
9 that you recall seeing on all of the checks that had
10 the legends on them?

11 A. Whenever I read it -- the exact wording
12 may have changed slightly from time, but it was
13 always, you know, words to that effect.

14 Q. Do you know whether the checks that were
15 given to other writers or freelance artists also had
16 a legend or a stamp on them?

17 A. I know that they did. I didn't see
18 everyone's checks, of course; but -- and it was my
19 understanding that they did.

20 Q. Did you ever discuss the check legends
21 with any of the other freelance writers or artists?

22 A. I don't recall specific, you know,
23 conversations in detail. But I know that from time
24 to time we would discuss them, because at first I
25 was a little puzzled seeing all this on here. You

1 Thomas

2 have been about two weeks or so.

3 Q. You testified that there was a script that
4 you wrote, I think it was on an Ironman script that
5 Stan didn't like and revised significantly?

6 A. Yes.

7 Q. Is that right?

8 A. Yes. He rewrote about 50 percent of it.

9 Q. Were you paid for the pages that you
10 submitted for that script?

11 A. That was one of the ones that I was doing
12 as part of the staff writer thing during those first
13 few weeks, so I wasn't paid separately. It was
14 counted as part of my staff writer salary, so I was
15 paid in that sense, for that and the Dr. Strange.
16 But I think -- I think those. I know Ironman was
17 and I think Dr. Strange's were all part of the
18 staff's salary.

19 Q. Were there any materials that you
20 submitted in your freelance capacity that were
21 modified by Stan?

22 A. Yes.

23 Q. Were you still paid for the pages that you
24 submitted?

25 A. Yes.

1 Thomas

2 MR. TOBEROFF: Leading.

3 THE WITNESS: I don't really know anything
4 about that, because I wasn't involved with it.

5 MS. KLEINICK: I'm about to get into a new
6 area so maybe we can take a five-minute break.
7 We have been going for about an hour.

8 THE VIDEOGRAPHER: This marks the end of
9 video number one of the deposition of Roy
10 Thomas. We are off the record at 12:06 p.m.

11 THE VIDEOGRAPHER: This is a continuation
12 of the deposition of Mr. Roy Thomas. This is
13 video number two. We're on the record at 12:18
14 p.m.

15 BY MS. KLEINICK:

16 Q. Mr. Thomas, when you first joined Marvel
17 in the 1960s, was it your understanding that the
18 copyrights to the materials you submitted for
19 publication would be owned by Marvel?

20 MR. TOBEROFF: Leading; assumes facts.

21 THE WITNESS: Yes, I assumed Marvel owned
22 the copyrights to whatever I wrote for them.

23 BY MS. KLEINICK:

24 Q. Was it your understanding throughout the
25 1960s and 1970s that the -- that Marvel would own

1 Thomas

2 the copyright to the materials that you submitted
3 for publication?

4 MR. TOBEROFF: Same objection.

5 THE WITNESS: Yes, it was.

6 BY MS. KLEINICK:

7 Q. And is that true of the freelance
8 materials that you submitted for publication and the
9 materials that you submitted while in your editorial
10 capacity?

11 A. Yes.

12 Q. Did Marvel have a policy to your knowledge
13 in the 1960s and early '70s that it owned the rights
14 to all of the materials that were submitted for
15 publication by either employees or freelancers?

16 MR. TOBEROFF: Vague.

17 THE WITNESS: Yes, I understood it and
18 considered that -- considered it's always owning
19 the copyrights, yes.

20 BY MS. KLEINICK:

21 Q. Was that policy generally understood in
22 the comics industry in the 1960s and early '70s?

23 MR. TOBEROFF: Calls for speculation.

24 THE WITNESS: To the best of my knowledge,
25 based on people I talked to over the years, it

1 Thomas

2 was generally known.

3 BY MS. KLEINICK:

4 Q. When you say "based on people I talked to
5 over the years," my question was: Was the policy
6 generally understood in the '60s and early '70s?

7 MR. TOBEROFF: Calls for speculation;
8 vague.

9 BY MS. KLEINICK:

10 Q. To your knowledge?

11 A. The artists and writers in the field --
12 those were the people I was talking about that I --
13 when I spoke to -- they knew that that is what the
14 -- what the company considered -- that it was
15 considered that -- and it was generally accepted
16 with some -- you know, some unhappiness about --
17 about the facts, perhaps; but it was accepted that
18 that was the conditions under which they were
19 working.

20 Q. Are you aware that there were certain
21 creator-owned comic lines established in the early
22 1970s?

23 A. Well, I'm aware of the fact that the
24 underground comics, for example, the -- which were
25 done by the youth counterculture and so forth, that

1 Thomas

2 A. I was not aware of any work he was doing
3 for any other publisher or whatever, except that
4 from time to time someone who was doing an article
5 -- a magazine or someone -- something that was doing
6 an article on Marvel might commission him to do a
7 drawing, like Esquire magazine did at one stage, and
8 perhaps some newspaper might have asked him to do it
9 separately, but using Marvel characters. I'm not
10 aware of anything he was doing that wasn't at least
11 Marvel related.

12 Q. In the 1960s to early '70s who decided
13 which books or series Kirby would work on?

14 A. Stan Lee.

15 MR. TOBEROFF: Objection to 1960s again.

16 We have a standing objection. 1960s means --

17 MS. KLEINICK: It's a standing objection.

18 MR. TOBEROFF: -- after July 1965; is that
19 correct?

20 THE WITNESS: I always meant it to be.

21 MS. KLEINICK: You made the standing
22 objection.

23 MR. TOBEROFF: I understand, but I don't
24 want the record to look like he's talking about
25 the early 1960s when he wasn't there.

1 Thomas

2 MS. KLEINICK: You made your objection.

3 THE WITNESS: I understand it as being
4 from '65 on, because I wouldn't know anything
5 about an earlier period. I wouldn't have been
6 paying as much attention.

7 BY MS. KLEINICK:

8 Q. Did Kirby receive assignments for
9 particular issues or titles?

10 A. Yes.

11 Q. Who did he get those assignments from?

12 MR. TOBEROFF: Asked and answered.

13 THE WITNESS: He got the assignment from
14 Stan. It might come through Sol Brodski or
15 someone, but it was always from Stan. It was an
16 ongoing, you know, kind of thing. But it had to
17 be renewed every month.

18 BY MS. KLEINICK:

19 Q. Are you aware of any instance where Jack
20 Kirby submitted artwork for an issue for a series
21 that Stan or Sol had not already assigned him to?

22 MR. TOBEROFF: Leading.

23 THE WITNESS: No.

24 BY MS. KLEINICK:

25 Q. And I think you testified that artists

1 Thomas

2 were -- artists submitted their finished pencils to
3 either Stan or to Sol for approval; is that right?

4 MR. TOBEROFF: Misstates testimony.

5 THE WITNESS: Yes. He turned it in
6 directly to Stan or Sol Brodski, with the idea
7 that Sol would show them to Stan.

8 BY MS. KLEINICK:

9 Q. Did -- did artwork that was submitted by
10 freelance artists from the time that you got there
11 in 1965 through the early '70s need to be approved
12 by Stan or Sol before it got published?

13 A. Yes, it had to be approved by Stan. Sol
14 didn't really have the authority to approve anything
15 unless he felt that Stan -- he was always acting on
16 Stan's authority, but he wouldn't have approved
17 anything on his own authority.

18 Q. Was Jack Kirby required during this time
19 period to submit his artwork to Stan for approval?

20 MR. TOBEROFF: Leading.

21 THE WITNESS: Yes. It was turned in to
22 Stan for -- for him as editor, to look at, to do
23 whatever he wanted to do.

24 BY MS. KLEINICK:

25 Q. Did Stan or any other editor ever make

1 Thomas

2 changes to the artwork that Kirby submitted for
3 publication?

4 A. Yes.

5 Q. Did Stan or any other editor ever ask
6 Kirby to redo anything that he had submitted to your
7 knowledge?

8 MR. TOBEROFF: Leading.

9 THE WITNESS: Yes. They did. It was not
10 a usual occurrence, but from time to time
11 something had to be redone.

12 BY MS. KLEINICK:

13 Q. In the instances where changes -- where
14 Stan determined that changes should be made to the
15 artwork that Kirby had submitted for publication by
16 Marvel, would Stan typically have Kirby make the
17 changes or --

18 A. Are you finished with the question?

19 Q. Would Stan typically have Kirby make the
20 changes?

21 MR. TOBEROFF: Assumes facts; leading;
22 compound.

23 THE WITNESS: He would -- he might have
24 Jack make the change, if Jack were there and
25 available or if there was plenty of time. He

1 Thomas

2 might also -- especially, if it was a fairly
3 simple change or something that he felt could
4 easily be handled. At the office he might have
5 one of the staff artists or production people
6 make it -- whether it be Sol Brodski, the
7 production manager, John Romita, who was an
8 artist on staff, or one of the other staff
9 artists.

10 BY MS. KLEINICK:

11 Q. Do you recall specific instances where
12 artwork that had been submitted by -- withdrawn.

13 Do you recall specific instances where
14 Stan determined that artwork that Jack had submitted
15 for publication should be changed?

16 A. I don't recall early instances. I'd have
17 to go over -- looking over covers and maybe
18 something would occur to me. I do know that in the
19 late 1969 or '70 period there were a couple of
20 instances where Jack's artwork for one Thor issue
21 and one Fantastic Four issue that was turned in just
22 as he left the company were altered considerably.

23 Q. Are you aware of any instances where Stan
24 either made changes or directed that changes be made
25 to any of the covers that Kirby submitted for

1 Thomas

2 publications?

3 A. I know changes were made from time to
4 time. I would have to go over a lot of covers to
5 begin to remember specific instances. I know that
6 changes would be made. It might just be a hand or a
7 background detail, something like that. Or it might
8 be a little more substantial. I know they were done
9 but I don't recall the specific instances.

10 But that was done as a standard on any
11 artist's work, if Stan decided there was a change to
12 be made, he just had it made.

13 MS. KLEINICK: I think probably now is a
14 good time to take a break for lunch. It's 1:15,
15 if that works for everybody.

16 THE WITNESS: It works for me. I don't
17 need over 15 minutes or something. You work out
18 whatever you want between you.

19 THE VIDEOGRAPHER: Off the record at
20 1:15 p.m.

21 VIDEOGRAPHER: On the record at 2:12 p.m.
22 BY MS. KLEINICK:

23 Q. Mr. Thomas, when you started working for
24 Marvel in 1965 through 1972, did you see the -- any
25 of the finished artwork -- finished pencils that

1 Thomas

2 Jack Kirby submitted on any of the stories that he
3 was working on?

4 A. On many of them.

5 Q. Do you ever recall seeing any notes or
6 suggested dialogue that Mr. Kirby included on the
7 artwork pages he turned in?

8 A. Yes. Pretty invariably, some sort of
9 notes -- whether some of it suggested dialogue, some
10 of it was other comments or plot things.

11 Q. And do you know on the issues where Stan
12 was the writer whether he -- what he would do with
13 the notes and dialogue that Kirby put in the
14 margins?

15 A. He would utilize them to make sure that he
16 understood fully what -- what was going on based on
17 Jack's expansion of the plot. And then he would --
18 as far as the dialogue, he would utilize little
19 snippets of it, or he would make up his own, as far
20 as I could tell when I was examining it and when I
21 was proofreading and marks were often still there.
22 He used very little of the exact wording.

23 Q. I would like to mark as Thomas Exhibit --
24 I guess we are up to 15 -- a document bearing
25 production number Marvel 15988 through 16125.

1 Thomas

2 the beginning; whether that was verbal -- or as
3 it was in so many cases -- written.

4 That kind of was part of the
5 writing, and it's part of the payment.

6 Q. What is the -- have you ever heard
7 of the term Marvel Method?

8 A. Yes.

9 Q. What is -- when you came to Marvel
10 in July of 1965, was the Marvel Method in use
11 at that time?

12 MS. KLEINICK: Objection.

13 A. Yes.

14 Q. What is the Marvel Method?

15 A. The Marvel Method -- sometimes also
16 called the Stan Lee Method -- but it didn't
17 totally originated with him, but mostly arose
18 in the -- I'm not really quite sure -- but it
19 was in place by the time I got there.

20 Because Stan became too busy to
21 write full scripts; and Larry Lieber, who had
22 been writing the scripts from his plots, you
23 know, was either too busy or was doing his
24 westerns and things and somewhat withdrawing
25 from doing the superheros.

1 Thomas

2 Stan was -- became -- would come up
3 with the idea for the plots, I guess, adapting
4 from the way he had originally done plots that
5 Larry would turn in the scripts.

6 And he simply would give those plots
7 to the artists, who would then draw the story,
8 break them down into pictures, expanding them,
9 whatever needed to be done to break them down
10 into pictures.

11 They would then turn them in, and he
12 would then add the -- he would dialogue it,
13 which means the dialogue and captions -- he
14 would add it later -- instead of writing what
15 we call script in advance, which is the more
16 usual method of writing comic books beforehand.

17 Q. Are you aware that Stan Lee has been
18 interviewed numerous times in which he has
19 described the Marvel Method?

20 A. I'm sure he has, yes. I'm aware of
21 that.

22 Q. Are you aware that Stan Lee, in
23 interviews, has stated that in 1960s, under the
24 Marvel Method, that artists were expected to
25 plot stories?

1 Thomas

2 MS. KLEINICK: Objection; states
3 facts not in evidence.

4 A. I haven't any knowledge of that.
5 It would have, you know, surprised
6 me; but if he did, he probably misspoke.

7 Q. Is it your understanding that at
8 Marvel, artists were -- part of their duties
9 were to plot the stories through the -- through
10 their artwork and through notes in the margins
11 and suggested dialogue?

12 MS. KLEINICK: Objection.

13 A. We didn't use that, you know, think
14 about that much or use that term then.

15 But as I look back on it, and over
16 the years and analyze it, I realize they
17 were -- I would say co-plotting the stories. I
18 would not say plotting.

19 When you are given a story idea,
20 even if it is a few sentence, quite often, and
21 certainly if it was more, as it was in many
22 cases, you're certainly not plotting the story,
23 you were co-plotting.

24 Q. Starting at the time you started --
25 well, whether or not they were co-plotting or

1 Thomas

2 plotting -- is it correct that artists were, at
3 the time you got to Marvel in 1965, artists
4 were expected to plot stories?

5 MS. KLEINICK: Objection.

6 A. They were expected to co-plot the
7 stories.

8 Q. Okay.

9 A. As they -- to do whatever is
10 necessary to tell the story; that involved
11 adding elements for the plot.

12 So, I call it co-plotting.

13 Q. And in your testimony yesterday, you
14 spoke about artists being supplied with a story
15 either in a synopsis or verbally.

16 Which was more common during the
17 time you were working at Marvel?

18 A. Do you mean what I know of Stan
19 Lee?

20 Or what I know of, say, myself and
21 other writers who came along?

22 Q. I'm talking about Marvel as a whole.

23 MS. KLEINICK: Objection.

24 A. Well, it would depend on the time.

25 And Marvel, as a whole, when I came

1 Thomas

2 work at Marvel; is that correct?

3 A. Yes.

4 Q. Do you know for certain, whether in
5 19 -- mid-1965, when you started work at
6 Marvel, that there was legend on the back of
7 your checks?

8 A. I, you know, I don't have a picture
9 in my mind of the very first check, but I do
10 know that -- from probably the beginning, and
11 certainly about the beginning; so, therefore, I
12 can only, you know, figure it must have been on
13 all of them that the legend was there.

14 I just probably, you know, I don't
15 remember this first check as such; but every
16 check I remember in those day, had that legend.

17 Q. But do you have a recollection of
18 checks in 1965 having that legend?

19 MS. KLEINICK: Objection.

20 A. Yes.

21 THE WITNESS: I'm sorry.

22 A. Yes.

23 Q. You have a specific recollection of
24 that?

25 A. Yes.